

AN ACT

RELATING TO TAXATION; ALLOWING GROSS RECEIPTS AND INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS DEDUCTIONS FOR RECEIPTS FROM PROVIDING CERTAIN INTERNET SERVICES AND ALLOWING GROSS RECEIPTS DEDUCTIONS FOR RECEIPTS FROM CERTAIN WORLD WIDE WEB ACTIVITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--INTERNET SERVICES. -- During the period July 1, 1998 through June 30, 2000, receipts from providing leased telephone lines, telecommunications services, internet services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from gross receipts if the sale is made to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax."

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--HOSTING WORLD WIDE WEB SITES.--Receipts from hosting world wide web sites may be deducted from gross receipts. For purposes of this section,

"hosting" means storing information on computers attached to the internet. "

Section 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--SALES THROUGH WORLD WIDE WEB SITES.--Receipts of any person derived from the sale of a service or property made through a world wide web site to a person with a billing address outside New Mexico may be deducted from gross receipts. "

Section 4. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

- (2) building, stadium or other structure;
  - (3) airport, subway or similar facility;
  - (4) park, trail, athletic field, golf course or similar facility;
  - (5) dam, reservoir, canal, ditch or similar facility;
  - (6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
  - (7) sewerage, water, gas or other pipeline;
  - (8) transmission line;
  - (9) radio, television or other tower;
  - (10) water, oil or other storage tank;
  - (11) shaft, tunnel or other mining appurtenance;
  - (12) microwave station or similar facility;
- or
- (13) similar work;

"construction" also means:

- (14) leveling or clearing land;
- (15) excavating earth;
- (16) drilling wells of any type, including seismograph shot holes or core drilling; or
- (17) similar work;

D. "financial corporation" means any savings and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that "engaging in business" does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the

purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a

reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm,

partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) any national, federal, state, Indian or other governmental unit or subdivision, or any agency, department or instrumentality of any of the foregoing;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by a person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service"

includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

M "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a moveable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

O. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

- (1) observation of tests conducted by the

performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

P. "research and development services" means any activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) the development of new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the

rationale for purchase, lease or other transfer of the product, process or system;

(5) analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection; and

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, Special Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department. "

Section 5. Section 7-9-10 NMSA 1978 (being Laws 1966, Chapter 47, Section 10, as amended) is amended to read:

"7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--  
DUTIES. --

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes, but is not limited to, engaging in any of the following in New Mexico: maintaining an office or other place of business, soliciting orders through employees or independent contractors, soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico, canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers, but "activity" does not include having a world wide web site as a third-party

provider on a computer physically located in New Mexico but owned by another nonaffiliated person.

B. To insure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected."

Section 6. Section 7-9C-7 NMSA 1978 (being Laws 1992, Chapter 50, Section 7 and also Laws 1992, Chapter 67, Section 7) is amended to read:

"7-9C-7. DEDUCTION--SALE OF A SERVICE FOR RESALE.--

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to

the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax. "

Section 7. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998. \_\_\_\_\_